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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,606	11/24/2003	Vladimir Fuflyigin	13445-022001 / OG-15	4241
26161	7590	06/14/2005		EXAMINER
FISH & RICHARDSON PC				WONG, ERIC K
225 FRANKLIN ST			ART UNIT	PAPER NUMBER
BOSTON, MA 02110				2883

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

CJ

Office Action Summary	Application No.	Applicant(s)	
	10/720,606	FUFLYIGIN ET AL.	
	Examiner Eric Wong	Art Unit 2883	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 24 November 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-54 is/are pending in the application.
 4a) Of the above claim(s) 37-54 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-36 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. <u>0505</u>
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-36, drawn to a waveguide with a particular composition, classified in class 385, subclass 141.
 - II. Claims 37-54, drawn to a dielectric waveguide, classified in class 385, subclass 123.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because combination claim 1 lacks the details of the subcombination claim 37. The subcombination has separate utility such as guiding multiple modes in the core.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mark Wefers on 5/31/05 a provisional election was made without traverse to prosecute the invention of group I, claims 1-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 37-54 are

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withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Drawings

6. The drawings are objected to because they contain hand written labels. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-10, 15-18, 20-22 and 24-36 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 060085 to Katsuyama.

As to claims 1-2, 16-18, 27-28, Katsuyama discloses in page 11, line 23 to page 12, line 4, a waveguide comprising:

- A first portion extending along a waveguide axis comprising a first chalcogenide glass; and
- A second portion extending along the waveguide axis comprising a second chalcogenide glass different from the first (the composition is changed radially as the glass is passed longitudinally).

As to claims 3, 5, 6, 8, and 9, the elements claimed are disclosed.

As to claim 10, the core is hollow.

As to claim 15, the loss coefficient is less than 2dB/m at a wavelength of 10.6 microns (page 14, lines 21-22).

As to claims 30-31, the electromagnetic energy falls within the values as claimed.

As to claim 32, a CO₂ laser is disclosed and it is inherent that such a laser would operate in the 100W range (page 2, line 12).

As to claims 33-34, a CO₂ laser is disclosed (page 15, line 21).

As to claims 21-22, the diameters are 150 microns (page 14, lines 16-17).

As to claims 24-26, and 35-36, the structure disclosed by Katsuyama is that of a Bragg fiber as it comprises a confinement region including multiple layers of different composition.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11-14, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katsuyama as applied to claim 1 above.

Katsuyama discloses an chalcogenide optical fiber with differing refractive indicies, cross sectional dimensions and wavelengths, but fails to explicitly disclose the specific refractive index of greater than/less than 2.7, a glass transition temperature above/below 180 degrees or the cross sectional dimension of 200 microns.

It is respectfully noted that Katsuyama discloses an equation that can calculate specific values of refractive indicies and does not specifically limit the refractive index values. It is further noted that glass transition temperature modification is commonly used in the art and changed by simple doping or addition of elements.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the values as claimed, since it has been held that where the general

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conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (MPEP 2131.03 III).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. United States Patent Application Publication 2003/0044158 to King et al. for an optical fiber having multiple layers of differing chalcogenide glass.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Wong whose telephone number is 571-272-2363. The examiner can normally be reached on Monday through Friday, 830AM - 430PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on 571-272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EW



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